

STATE OF MICHIGAN  
COURT OF APPEALS

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E. H. TULGESTKA & SONS, INC.,  
  
Petitioner-Appellee,

UNPUBLISHED  
September 16, 2014

V

No. 312774  
Tax Tribunal  
LC No. 00-414131

DEPARTMENT OF TREASURY,  
  
Defendant-Respondent.

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Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the final opinion and judgment of the Michigan Tax Tribunal canceling a bill for taxes due (R402803) and ordering a refund to petitioner in the amount of \$1,332 plus interest. We held this appeal in abeyance pending our Supreme Court's opinions in *Fradco, Inc v Dep't of Treasury*, 495 Mich 104; 845 NW2d 81 (2014), and *Andrie, Inc v Dep't of Treasury*, \_\_\_ Mich\_\_\_; \_\_\_NW2d\_\_\_ (Docket No. 145557, issued June 23, 2014). We affirm in part, reverse in part, and remand.

Respondent first argues that the Tax Tribunal erred by canceling R402833 because the tribunal did not have subject matter jurisdiction over petitioner's petition. In *Fradco*, 495 Mich 104, the Court held that the 35-day appeal period provided in MCL 205.22(1) is not triggered until the Department of Treasury complies with both MCL 205.28(1) and MCL 205.8 if a taxpayer files with the department a written request that copies of letter and notices regarding a dispute with the taxpayer be sent to the taxpayer's official representative. *Id.* at 118. Respondent now concedes that the tribunal properly concluded that petitioner timely filed its appeal and properly canceled R402803.<sup>1</sup>

Respondent also argues that the Tax Tribunal erred by applying a legal presumption that sales tax is paid on any transaction in the state that is subject to the sales tax. In *Andrie*, \_\_\_ Mich \_\_\_, the Court expressly rejected the argument that a retail purchaser is entitled to a presumption that sales tax is paid on retail transactions in Michigan. The Court concluded that

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<sup>1</sup> Respondent concedes that the statute of limitations precludes it from assessing use tax for the period between April 1, 1999 and March 31, 2005.

the taxpayer bears the burden of demonstrating entitlement to the exemption set forth in MCL 205.94(1)(a). *Id.* at slip op p 16. The parties now concede that the Tax Tribunal erred by concluding that the property valued at \$22,191 was exempt from use tax. The record reveals that that petitioner failed to affirmatively show that it was entitled to the use tax exemption under MCL 205.94(1)(a). We therefore reverse the tribunal to the extent that it awarded petitioner a refund of \$1,332 plus interest and we remand for entry of a corrected final opinion and judgment consistent with our conclusion that petitioner is not entitled to a refund of \$1,332 plus interest.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Elizabeth L. Gleicher

/s/ Amy Ronayne Krause